

REMARKS

Review and reconsideration of the Office Action of January 3, 2005, is respectfully requested in view of the above amendments and the following remarks.

Claims 45-88 are pending.

The Examiner has made the restriction requirement final. Claims 50, 55-59, 62, 70-72, and 74-85 are withdrawn as non-elected inventions. The Examiner has withdrawn the restriction with respect to claim 49, which is still under examination, since SEQ ID NO: 2 encompasses SEQ ID NO: 1.

Accordingly, claims 45-49, 51-54, 60-61, 63-69, 73 and 86 are under examination.

Applicants are pleased to note that the Examiner has indicated that claims 53-54, 60 and 73 are free of prior art.

The Examiner has rejected:

- Claims 45-49, 51-52, 61, 63-69 and 86 under 35 U.S.C. § 101 allegedly because the claimed invention is directed to non-statutory subject matter.
- Claims 45-49, 51-54, 60-61 and 73 under 35 U.S.C. § 112, second paragraph as being indefinite.
- Claims 45-49, 51-52, 61, 63-69 and 86 under 35 U.S.C. 102(b) as being allegedly anticipated by Greiner et al (1998, Applicant submitted)

Applicant has carefully reviewed and amended the claims to overcome the formalities objections/rejections, and submits that the art rejections are overcome by the following arguments.

Office Action

Turning now to the Office Action in greater detail, the paragraphing of the Examiner is adopted.

Claim Rejections - 35 U.S.C. §101

The Examiner has rejected Claims 45-49, 51-52, 61, 63-69, and 86 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The Examiner explains her position in the last paragraph of page 2 and first paragraph of page 3. The Examiner suggests amending these claims by using the term "isolated" preceding the recitation "nucleic acid".

Applicants are pleased to follow the suggestions of the Examiner. The claims have been amended.

Claim Rejections - 35 U.S.C. § 112

The Examiner has rejected claim 45-49, 51-54, 60-61 and 73 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention.

In the Office Action (page 3, second paragraph, complete pages 4-5, and page 6, first paragraph), the Examiner lists the defects in claims 45-49, 51-54, 60-61 and 73, as well as suggestions to obviate some of the rejections.

Applicants appreciate the Examiner's helpful suggestions, and have addressing each one of these rejections as shown in the amended claims.

The Examiner will note that, with respect to claim 65, part of the subject matter was moved into new claim 86, to avoid having a range within a range (see Office Action page 5, first paragraph), and that with respect to claim 64, the term "arrested pollen" has been further specified or defined according to the specification at page 16, last paragraph and page 17, first paragraph. No new matter was added.

The remaining proposed amendments to the claims are self-explanatory or follow the Examiner's suggestions.

Claim Rejections - 35 U.S.C. § 102

The Examiner has rejected claims 45-49, 51-52, 61, 63-69 and 86 under 35 U.S.C. § 102(a) as being allegedly anticipated by Greiner et al. (1998, Plant Physiol. 116:733-742).

The Examiner's position can be found in page 6, paragraphs 2-3 and page 7, first paragraph.

Applicants note that Greiner et al. was listed in the International Search Report as a type A reference (a document defining the general state of the art which is not considered to be of particular relevance).

Following a review of this reference, Applicants note that Greiner et al. only teach the cDNA for the apoplasmic inhibitor (INH) of tobacco, and the binding of the INH protein to the cell wall invertase (CWI). Greiner et al disclose a very different expression pattern for an invertase (CWI), especially an expression in roots or stamen (see Fig. 8).

Although Greiner et al. mentions CWI and INH transformed tobacco cells (see Greiner et al, page 738, second column, last paragraph), Greiner et al. does not teach at all, or suggest, a nucleic acid promoter specific for tapetum and pollen, wherein said promoters comprise at least 900 contiguous base pairs upstream of the TATA box of SEQ ID NO: 1 or 2.

For a reference to anticipate it must disclose all the elements of the rejected claims.

Therefore, Greiner et al cannot anticipate claims 45-49, 51-52, 61, 63-69 and 86 under 35 U.S.C. § 102(a).

Moreover, the Examiner indicates in page 7, lines 5-6, that the objection under 35 U.S.C. § 102(a) would be obviated if the claims are amended to overcome the rejections under 35 U.S.C. § 101 and § 112.

The above amendment to claims address each one of the rejections under 35 U.S.C. § 101 and § 112. Thus, according to the Examiner, the anticipation rejection under 35 U.S.C. § 102(a) has been obviated.

In addition, the Examiner acknowledges that claims 53-54, 60 and 73 are free of prior art (see Office Action, page 7, third paragraph).

Applicants appreciate the indication. Indication of allowance is respectfully requested.

Duty of Disclosure

Applicants note that WO 98/41643 cited as a "Y" category reference in the ISR was applied as a reference at page 3 of the Office Action of September 13, 2004, but appears not to have

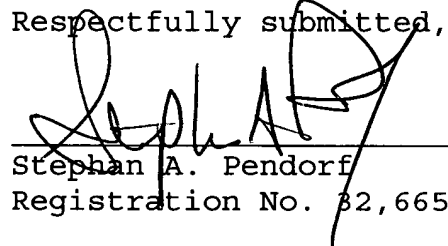
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been cited on form PTO-892. (At least, Applicant's do not have a form PTO-892 accompanying the Office Action of September 13, 2004). If not already done, listing of this reference on PTO-892 is respectfully requested.

Favorable consideration and early issuance of the Notice of Allowance are respectfully requested. Should further issues remain prior to allowance, the Examiner is respectfully requested to contact the undersigned at the indicated telephone number.

Respectfully submitted,


Stephan A. Pendorf
Registration No. 32,665

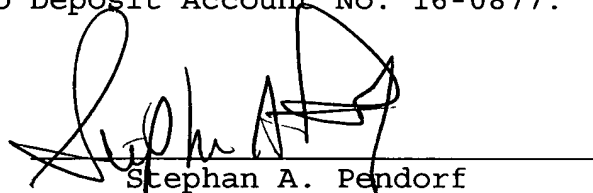
PENDORF & CUTLIFF
5111 Memorial Highway
Tampa, FL 33634-7356

Date: **May 3, 2005**

CERTIFICATION OF MAILING AND AUTHORIZATION TO CHARGE

I hereby certify that a copy of the foregoing AMENDMENT A for U.S. Application No. 10/009,966 filed December 12, 2001, was deposited in first class U.S. mail, with sufficient postage, addressed: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450, on **May 3, 2005**.

The Commissioner is hereby authorized to charge any additional fees, which may be required at any time during the prosecution of this application without specific authorization, or credit any overpayment, to Deposit Account No. 16-0877.


Stephan A. Pendorf